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22850 7590 04/23/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
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1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte AKINOBU KAKIMOTO,
11 KENTARO OSHIMO,
12 MASAHICO MATSUDO
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15 Appeal 2009-1281
16 Application 10/511,440
17 Technology Center 1700
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20 Oral Hearing Held: March 19, 2009
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23
24 Before TERRY J. OWENS, MARK NAGUMO, and
25 JEFFREY B. ROBERTSON, Administrative Patent Judges
26

27 ON BEHALF OF THE APPELLANT:
28

29 CHRISTOPHER A. BULLARD, ESQ.
30 Oblon & Spivak
31 1940 Duke Street
32 Alexandria, Virginia 22314
33 (703) 412-6396
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1 The above-entitled matter came on for hearing on Thursday,
2 March 19, 2009, commencing at approximately 2:36 p.m., at the U.S. Patent
3 and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before
4 Kevin E. Carr, Notary Public.

5 MR. BULLARD: Good afternoon, Your Honors. How would
6 you like me to proceed this afternoon? Would you like me to just --

7 JUDGE OWENS: 1281 first.

8 MR. BULLARD: 1281? May I approach the court
9 stenographer?

10 Good afternoon, Your Honors. My name is Christopher
11 Bullard and I represent the Appellant in appeal number 2009-1281.

12 In this case there are two independent claims that are argued on
13 appeal, individually argued on appeal. Those independent claims each recite
14 a relationship between two variables, head distance and gas jetting velocity.
15 They recite a specifically claimed range of this relationship between the two
16 variables.

17 The Examiner improperly relies on the Park reference as
18 rendering this claimed range obvious. In particular, the Examiner notes that
19 each one of these variables would be obviously obtained through routine
20 experimentation. However, only result-effective variables can be optimized.

21 As noted in *In re Anthonie*, a particular parameter must first be
22 recognized as a result-effective variable. An example, a variable which
23 achieves a recognized result before the determination of an optimum or
24 workable ranges of the variable might be characterized as routine
25 experimentation. This standard still holds true, even after the case of *KSR*
26 against *Teleflex* in the Supreme Court. A case that is precedential, that was

1 passed down by the Board of Patent Appeals and Interferences after the
2 reply brief was due in the case follows *In re Anthonie*. This is the case of ex
3 parte Whalen. It is found at 89 USPQ 2d 1078. In that case --

4 JUDGE NAGUMO: Where in the reference would you argue
5 that the Examiner failed? We're reasonably familiar with the case law.

6 MR. BULLARD: Thank you, Your Honor. In the cited
7 reference the Examiner has identified head distance. Head distance in this
8 case, as recited in the claims, is the distance between the showerhead in the
9 process chamber and the mounting surface that supports the substrate. Now,
10 the Examiner has pointed to the Park reference, which has a teaching of
11 changing the distance that the substrate holder is placed with respect to the
12 mounting table, which has a heating coil. Park teaches this for the purpose
13 of optimizing the temperature of the wafer.

14 Now, through that action, the Examiner points out that the
15 distance between the wafer, the substrate holder, and the gas jetting nozzles
16 would change. However, that change is only an incidental change. Park
17 makes no reference whatsoever to head distance and does not recognize it as
18 a variable that achieves a recognized result.

19 Likewise, the Examiner points to a teaching in Park that notes
20 that pressure change can be adjusted so that the temperature of the wafer can
21 be optimized. And again, the Examiner, although the reference makes no
22 statement whatsoever of a gas jetting velocity, states that by changing
23 pressure, you would also be changing the gas jetting velocity. Now, that's
24 flawed for two reasons. One, that's a statement of inherency that is
25 unsupported by the record, but also we again have a situation where the cited

1 reference does not teach, suggest or even make any mention of the cited
2 variable.

3 The most notable point, Your Honors, is that the independent
4 claims don't merely recite a range of head distance and they don't merely
5 recite a range of gas jetting velocities, but they recite an interrelationship
6 between these two variables that's neither disclosed nor suggested by the
7 Park reference.

8 In the face of this clear deficiency, the Examiner has not created
9 -- has not established a prima facie case of obviousness. For that reason, the
10 Appellant respectfully requests that the rejection based on Park be reversed.
11 If Your Honors have no questions, we would like to finish with that for this
12 case.

13 JUDGE OWENS: No questions.

14 MR. BULLARD: Thank you, Your Honor.

15 Whereupon, at approximately 2:42 p.m., the hearing was
16 concluded.